

Application No. 10/724,301
Amendment Dated June 6, 2006
Reply to Office action of March 8, 2006

Remarks/Arguments:

Claims 1 to 54 were pending and before the Examiner. Claims 6-8, 10, 12-15, 16 in part, 17-23, 25-31 and 33-54 have been withdrawn. Claims 1-3, 16, 24 and 32 have been amended. Claims 1-5, 9, 11, 16, 24 and 32, as amended, are now pending and before the Examiner. Support for the amendments can be found throughout the specification, for example on pages 15 and 17.

Priority

Applicants submit herewith copies of the English translations of the German Patent Applications 102 56 081, filed November 29, 2002, and 103 30 686, filed July 8, 2003, as well as the translator's Declarations. Furthermore, applicants note an English translation for US provisional application 60/487,902, filed July 17, 2003, as well as a Declaration of the translator was filed with the Patent Office on December 2, 2004. A copy of the submission is enclosed herewith. Applicants therefore maintain that priority is in order.

Objections

Claim 16 has been objected to as being depending on the nonelected claim 14. Claim 16 has been amended to depend on elected claim 11. Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the objection.

Rejections

In the communication mailed March 8, 2006, claims 1-3, and 9-11 have been rejected under 35 U.S.C §112, second paragraph, as being allegedly indefinite because according to the office action it is unclear what phosphotransferase gene is being referred to. While applicants respectfully disagree, in response, applicants have amended the claims to reference a neomycin phosphotransferase gene that encodes a polypeptide comprising the amino acid sequence of SEQ ID NO:2. Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Claim 24 has been rejected under 35 U.S.C §112, second paragraph, as being allegedly indefinite because according to the office action it does not sufficiently distinguish between cells in vitro and in the body. While applicants respectfully disagree,

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in response, applicants have amended claim 24 to recite "in vitro." Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Claim 32 has been rejected under 35 U.S.C §112, second paragraph, as being allegedly indefinite because according to the office action the preamble does not state what enrichment is referred to. While applicants respectfully disagree, in response, applicants have amended claim 32 to recite "a method of enriching for mammalian cells that express a modified neomycin-phosphotransferase gene." Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the rejection.

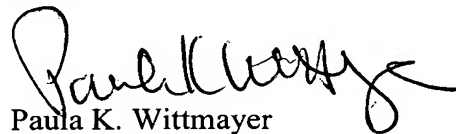
Claim 1-3, 9-11, 24 and 32 have been rejected under 35 U.S.C. §112, first paragraph, for allegedly failing to comply with the written description requirement. While the applicants respectfully disagree, applicants have amended the claims to refer to a neomycin phosphotransferase gene that encodes a polypeptide comprising the amino acid sequence of SEQ ID NO:2 with specified modifications. Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Claim 1-3, 9-11, 24 and 32 have been rejected under 35 U.S.C. §112, first paragraph, for allegedly failing to enable all modified neomycin phosphotransferases. While the applicants respectfully disagree, applicants have amended the claims to refer to a neomycin phosphotransferase gene that encodes a polypeptide comprising the amino acid sequence of SEQ ID NO:2 with specified modifications. Applicants maintain that it is well within the skill of the art to make and use the claimed invention. Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the rejection.

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Applicants maintain that the remarks above render the Examiner's rejections moot as to all the pending claims. Applicants therefore submit that all the pending claims are allowable and respectfully solicit a Notice of Allowance for all of the pending claims. If the Examiner feels that a telephone interview would be helpful in advancing prosecution of this application, the Examiner is invited to contact the attorney below.

Respectfully submitted,



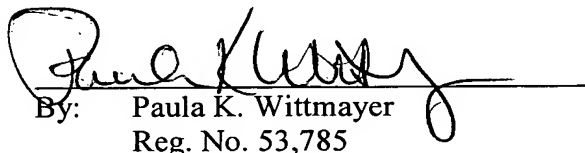
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Dated: June 6, 2006

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on June 6, 2006



By: Paula K. Wittmayer
Reg. No. 53,785

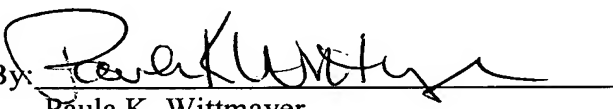


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Enclosures:

1. Express Mail Certificate (1 page)
2. Amendment (15 pages)
3. Figures (4 pages)
4. Copy of return postcard mailed on December 2, 2004; stamped by the USPTO on December 6, 2004 (1 page)
5. Copy of Submission of English Translation Serial No. 60/487,902 statement, dated December 2, 2004 (1 page)
6. Copy of Translator's Declaration of English Translation, submitted December 2, 2004 (1 page)
7. Copy of English Translation Serial No. 60/487,902, submitted December 2, 2004 (99 pages including drawings)
8. Translator's Declaration of English Translation of German Patent Application 102 56 081 (1 page)
9. English Translation of German Patent Application 102 56 081
10. Translator's Declaration of English Translation of German Patent Application 103 30 686 (1 page)
11. English Translation of German Patent Application 103 30 686
12. Return Post Card

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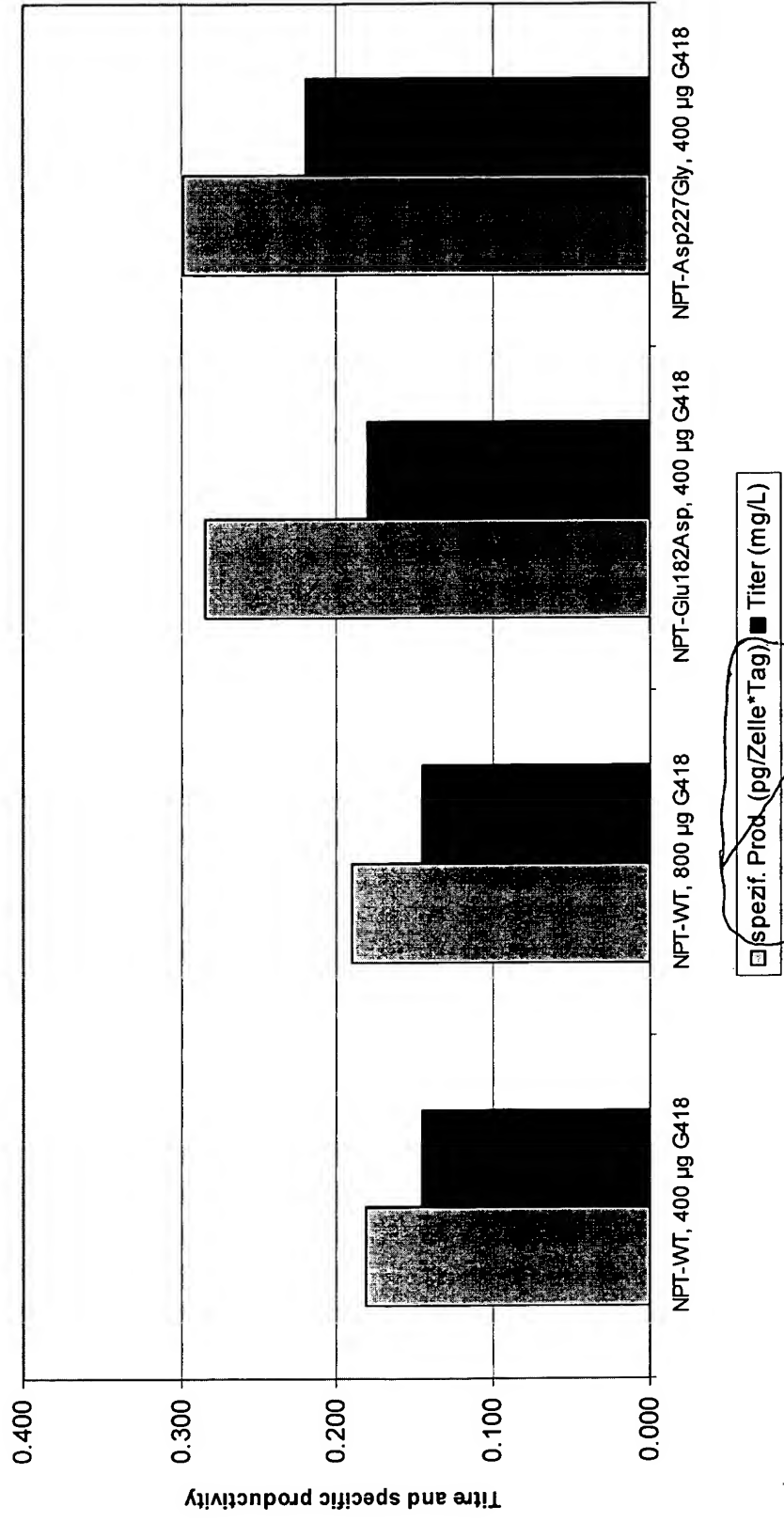
Amendments to the Drawings:

The attached sheets of drawings include changes to Fig. 5 and Fig. 6A. These sheets, which include Fig. 5 and Fig. 6A, replace the original sheets including Fig. 5 and Fig. 6A. In Fig. 5 and Fig. 6A, the description of the X-axis has been translated from German to English.

Attachments: Replacement Sheets (2)
 Annotated Sheets Showing Changes (2)

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Annotated Sheet Showing Changes

Figure 5



Translated from German to English

Figure 6A

